

AMENDED IN ASSEMBLY JUNE 19, 2012

AMENDED IN SENATE MAY 15, 2012

AMENDED IN SENATE APRIL 9, 2012

**SENATE BILL**

**No. 1160**

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**Introduced by Senator Padilla**

February 22, 2012

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An act to amend Section 7904 of, and to repeal and add Section 7907 of, the Public Utilities Code, relating to communications.

LEGISLATIVE COUNSEL'S DIGEST

SB 1160, as amended, Padilla. Communications: service interruptions.

Existing law provides that an agent, operator, or employee of a telegraph or telephone office who willfully refuses or neglects to send a message received by the office is guilty of a misdemeanor. Existing law provides that these requirements are not applicable when charges for transmittal or delivery of the message have not been paid or tendered, for messages counseling, aiding, abetting, or encouraging treason or resistance to lawful authority, to a message calculated to further any fraudulent plan or purpose, to a message instigating or encouraging the perpetration of any unlawful act, or to a message facilitating the escape of any criminal or person accused of crime.

This bill would retain the provision that the above-described requirements are not applicable when payment for charges for transmittal or delivery of the message has not been paid or tendered, but would delete the other enumerated exceptions.

Existing law provides that where a law enforcement official has probable cause to believe that a person is holding hostages and is committing a crime, or is barricaded and is resisting apprehension

through the use or threatened use of force, the official may order a previously designated telephone corporation security employee to arrange to cut, reroute, or divert telephone lines, as specified.

This bill would repeal this provision.

This bill would prohibit a governmental entity, as defined, and a provider of communications service, as defined, acting at the request of a governmental entity, from undertaking to interrupt communications service, as defined, for the purpose of protecting public safety or preventing the use of communications service for an illegal purpose, except pursuant to an order signed by a judicial officer, as defined, that makes specified findings. The bill would require the order to *clearly describe the specific service to be interrupted with sufficient detail as to customer, cell sector, central office, or geographical area affected*, be narrowly tailored to the specific circumstances under which the order is made, and would ~~prohibit~~ *require that the order from interfering not interfere* with more communication than is necessary to achieve the purposes of the order. The bill would ~~require any~~ *allow the order to authorize an interruption of service to extend only for as long as is reasonably necessary and to, require that the interruption cease immediately once the danger that justified the interruption is addressed abated or an application for court order has been denied, and require that the communications service provider be notified in writing to cease the interruption.* The bill would provide that a good faith reliance upon an order of a judicial officer, *or a signed statement of intent to apply for a court order, as prescribed*, constitutes a complete defense for any communications services provider served with an order that meets the above requirements against any action brought as a result of the interruption to communications service as directed by that order.

The bill would also find and declare that it is a matter of statewide concern to ensure that California users of any communications service not have this service interrupted and thereby be deprived of a means to connect with the state's 911 emergency services or be deprived of a means to engage in constitutionally protected expression.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 7904 of the Public Utilities Code is  
2 amended to read:

7904. Every agent, operator, or employee of any telegraph or telephone office, who willfully refuses or neglects to send any message received at the office for transmission, or willfully postpones the transmission of the message out of its order, or willfully refuses or neglects to deliver any message received by telegraph or telephone, is guilty of a misdemeanor. Nothing in this section shall be construed to require any message to be received, transmitted, or delivered, unless the charges thereon have been paid or tendered.

SEC. 2. Section 7907 of the Public Utilities Code is repealed.

SEC. 3. Section 7907 is added to the Public Utilities Code, to read:

7907. (a) For purposes of this section, the following terms have the following meanings:

(1) “Communications service” means any communications service that interconnects with the public switched telephone network and is required by the Federal Communications Commission to provide customers with 911 access to emergency services.

(2) “Governmental entity” means every local government, including a city, county, city and county, a transit, joint powers, special, or other district, the state, and every agency, department, commission, board, bureau, or other political subdivision of the state.

(3) “Interrupt communications service” means to knowingly or intentionally suspend, disconnect, interrupt, or disrupt communications service to one or more particular customers or all customers in a geographical area. *“Interrupt communications service” does not include any interruption of service pursuant to a customer service agreement, a contract, a tariff, a provider’s internal practices to protect the security of its networks, Section 2876, 5322, or 5371.6 of this code, Section 149 or 7099.10 of the Business and Professions Code, or subdivision (d) of Section 4576 of the Penal Code.*

(4) “Judicial officer” means a magistrate, judge, justice, commissioner, referee, or any person appointed by a court to serve in one of these capacities, of any state or federal court located in this state.

(b) (1) No governmental entity and no provider of communications service, or any agent thereof, acting at the request

1 of a governmental entity, shall interrupt communications service  
2 for the purpose of protecting public safety or preventing the use  
3 of communications service for an illegal purpose, except pursuant  
4 to an order signed by a judicial officer that includes all of the  
5 following findings:

6 ~~(1)~~

7 (A) That probable cause exists that the service is being or will  
8 be used for an unlawful purpose or to assist in a violation of the  
9 law.

10 ~~(2)~~

11 (B) That absent immediate and summary action to interrupt  
12 communications service, serious, *direct, immediate, and*  
13 *irreparable* danger to public safety will result.

14 ~~(3)~~

15 (C) That interruption of communications service will not  
16 suppress speech that is protected by the First Amendment to the  
17 United States Constitution or Section 2 of Article I of the California  
18 Constitution, or violate any other rights under federal or state law.

19 ~~(e)~~

20 (2) The order shall *clearly describe the specific service to be*  
21 *interrupted with sufficient detail as to customer, cell sector, central*  
22 *office, or geographical area affected, shall* be narrowly tailored  
23 to the specific circumstances under which the order is made, and  
24 shall not interfere with more communication than is necessary to  
25 achieve the purposes of the order.

26 ~~(d) Any~~

27 (3) ~~The order shall authorize an interruption of service shall~~  
28 ~~extend only for as long as is reasonably necessary and shall require~~  
29 ~~that the interruption cease immediately once the danger that~~  
30 ~~justified the interruption is addressed abated or an application for~~  
31 ~~court order has been denied, and that the communications service~~  
32 ~~provider be notified in writing to cease the interruption.~~

33 (c) *An order to interrupt service that falls within the federal*  
34 *Emergency Wireless Protocol shall be served on the California*  
35 *Emergency Management Agency. All other orders to interrupt*  
36 *service shall be served on the communications service provider's*  
37 *contact for receiving requests from law enforcement, including*  
38 *receipt of and responding to state or federal warrants, orders, or*  
39 *subpoena.*

1     (d) *Nothing in this section curtails a governmental entity from*  
2 *reliance on judicially recognized exceptions to the prohibition on*  
3 *prior restraints on speech. If a governmental entity determines*  
4 *that the circumstances justify an interruption of communications*  
5 *service without first obtaining an order as required by this section,*  
6 *the governmental entity shall do all of the following:*

7     (1) *Apply for a court order without delay, and in no event, later*  
8 *than one hour after an interruption of communications service.*

9     (2) *Provide the provider of communications service involved*  
10 *in the service interruption a statement of intent to apply for a court*  
11 *order signed by an authorized official of the governmental entity.*

12     (3) *Provide public notice of the application for a court order*  
13 *authorizing the service interruption.*

14     (e) A provider of communications service that intentionally  
15 interrupts communications service pursuant to subdivision (b) shall  
16 comply with any rule or notification requirement of the commission  
17 or Federal Communications Commission, or both, and any other  
18 applicable provision or requirement of state or federal law.

19     (f) Good faith reliance upon an order of a judicial officer  
20 authorizing the interruption of communications service pursuant  
21 to subdivision (b), *or upon a signed statement of intent to apply*  
22 *for a court order pursuant to subdivision (d),* shall constitute a  
23 complete defense for any communications *service* provider served  
24 with an order that meets the requirements of that subdivision  
25 against any action brought as a result of the interruption to  
26 communications service as directed by that order.

27     (g) The Legislature finds and declares that it is a matter of  
28 statewide concern to ensure that California users of any  
29 communications service not have that service interrupted, and  
30 thereby be deprived of 911 access to emergency services or a  
31 means to engage in constitutionally protected expression.